

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 849 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? Yes.

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

GUJARAT MOTOR VEHICLES DEPTT. TECHNICAL OFFICERS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

MR N D NANAVATI, SR. Advocate for MR SR BRAHMBHATT
for Petitioners.

MR SP HASURKAR AND MR PB BHATT for Respondent No.1 & 2
MR RJ OZA for Respondent No. 3
Respondent No.4 served.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/09/98

ORAL JUDGEMENT

1. The respondent no.1 by an order dated 2-2-98 annexure 'H' has appointed respondent no.4 by way of transfer on the post of Deputy Director of Transport

(Administration) Class-I in the pay scale of Rs.3000-4500. The said action of respondent no.1 is challenged in this petition by the Gujarat Motor Vehicles Department Technical Officers, the petitioner no.1, and by petitioner no.2 who is the member of the Association belonging to Scheduled Caste community, on the ground that the respondent no.4 does not have a requisite experience in the Department and belonging to a junior cadre in the pay scale of Rs.2200-4200, therefore, the respondent no.4 cannot supersede the members of the petitioners. The said order is challenged as illegal, arbitrary, malafide and violative of the prevailing rules and the prevailing provisions of circulars.

2. Mr. V.M. Chauhan, Joint Secretary, has filed an affidavit-in-reply on behalf of respondent no.1 & 2. The respondent no.4 though duly served has not filed appearance in the matter. The respondent no.1 and 2 defended their order by placing reliance on the Recruitment rules framed under proviso to Article 309 of the Constitution. It is the stand of respondent no.1 & 2 in their affidavit-in-reply that "there are 3 posts of Deputy Directors in the Office of the Commissioner of Transport. These are Deputy Director (Research & Development), Deputy Director (Enforcement) and Deputy Director (Administration). By virtue of the nomenclature applied to these posts, it will be amply clear that two of the posts require technical knowledge in the working of the Transport Department, while the third, Deputy Director (Administration), requires administrative skills. It is with this objective that Government, in consultation with the GPSC formulated the Recruitment Rules. At this juncture, it is further submitted, that the Recruitment Rules to the post of Deputy Director are the same as that of Recruitment Rules to the posts of Regional Transport Officers in the Department. The Recruitment Rules for the posts of Regional Transport Officer/Deputy Director are at Annexure-I. Appointment to the posts of Regional Transport Officers is governed by Notification No.MVO-1164-7570-E, dated 26.8.1964. The appointment to the posts of R.T.O. can be made either by nomination or by promotion or by transfer or by deputation. In the case of nomination, the post is filled as a first appointment. In the case of promotion it is from the cadre of Supervisors or A.R.T.Os. (Assistant Regional Transport Officers). In the case of transfer, it is either from the cadre of Deputy Collectors from the State Civil Service or from the cadre of Deputy Suptd. Of Police from the State Police Department. In the case of deputation, it is from the cadre of Traffic or Engineering Department of the Gujarat

State Road Transport Corporation. It will be, therefore, transparent that a Deputy Collector from the State Civil Service cadre is eligible for transfer and appointment as Deputy Director, as is the case in the present instance." So far as the present case is concerned, the respondent no.4 was serving as a Deputy Collector of a junior cadre in the pay scale of Rs.2200-4200, in the post of Assistant Commissioner, Mid-day Meal Scheme, is transferred to the post of Deputy Director of Transport (Administration) Class-I. The petitioners have challenged the appointment by transfer of respondent no.4 on various grounds.

3. Mr. Nanavati learned senior advocate appearing for petitioners, after inviting my attention to Recruitment rules and circulars issued by the State Government submitted that the respondents have totally misused their power by totally ignoring and overlooking their own circulars in the matter of appointments by transfer from one department/service to another by appointing respondent no.4, belonging to junior cadre, drawing the salary in a junior scale, having no experience in the cadre where he is appointed. It was further submitted that the petitioner No.2 is belonging to the Scheduled Caste community and therefore the post in question is required to be filled in by way of roster maintained by the department. In any case, it was not open to the respondent no.1 to bring any person by way of transfer ignoring the claim of atleast seven candidates and especially petitioner no.2 (a S.C. candidate), who are eligible to be promoted to the said post. Mr. Nanavati further submitted that the State Government had not consulted the Gujarat Public Service Commission before appointing respondent no.4, which is a mandatory requirement under Article 320(3) of the Constitution of India, and therefore, the appointment of respondent no.4 is illegal and required to be quashed and set aside. Lastly, Mr. Nanavati submitted that the impugned order of appointment by transfer is malafide and the same was passed with a view to accommodate respondent no.4.

4. Having heard learned advocates at length, it is clear that in the present case the State Government has exercised its powers under the relevant recruitment rules by transferring the respondent no.4 to the post of Deputy Director of Transport (Administration) Class-I. Merely because the State Government has powers to transfer and to appoint outsiders to fill up the post of Deputy Director of Transport (Administration) Class-I, the question that may arise for consideration is whether the order in question is just and bonafide, and the same is

in the exigencies of public interest and secondly whether norms and principles have been followed before effecting appointment by transfer? My attention has been invited on the General Circular No.14, bearing No. G.R., P & S. D., No.5027/46 dated 4th May 1950, which deals with Principles regulating appointments by transfer from one Department/service to another which reads as under:

"The Government has laid down, in consultation with the Public Service Commission, the following principles for regulating appointments by transfer from one Department or service to another, viz.:-

- (1) The proposed transfer is in public interest and the officer can be spared by the Department to which he belongs;
 - (2) The officer proposed to be transferred possesses the required qualifications and experience for the post to which he is to be transferred and he is willing to be transferred to the other department or service.
 - (3) In making an appointment by transfer, preference shall be given to the senior most officer possessing the requisite qualifications and experience;
 - (4) The service or Department in which the appointment is to be made has itself no officer with the required qualifications and experience who could be suitably promoted to the post ;
 - (5) The vacancy was unexpected and it was not possible to give the necessary training and experience to one of the officers of the Department itself or that to give such training would cause undue delay.
2. The ordinary cadre of Department of a service is expected to include training or deputation reserve required for training all officers necessary for its normal work and accordingly, the occasion for recruitment by transfer from another Department or service should be rare. When, however, such an occasion actually arises, the foregoing principles should ordinarily be observed. Though these principles are ordinarily intended for appointment to gazetted services or posts, they should be observed, as far as

possible, in respect of appointment to non-gazetted posts or services.

5. The petitioner has also produced the extract of part III of Gazette bearing G.C.G.A.D., No.GSF-1060-F dated 1.5.1960 which prescribes General Circular No.1. The bare reading of this circular it is clear that principles regulating appointment by transfer from one Department/Service to another prevailing in the former Bombay State is continued to operate in the new State of Gujarat until they are changed or modified by the Government. Nothing is pointed out that Circular No.14 is changed or modified. In view of this, the respondents are required to take into consideration the principles laid down in the said circular dated 4-5-1950 before any appointment by transfer is made. It is true as stated in the said circular that principles should ordinarily be followed whenever an occasion arises, but they can't be overlooked. Since the principles are prescribed after consultation with Public Service Commission they are more relevant and it has its own force. Mind you! government is bringing absolutely a stranger against the valid claim of the promotion of the departmental candidates. Therefore the Government should be more careful and under an obligation to take into consideration the principles laid down in the said circular. The principles enumerated in the circular inter-alia provides that the transfer should be in public interest and the officer can be spared by the department to which he belongs and the officer possesses the required qualifications and experience for the post to which he is to be transferred and even before making appointment by transfer, preference is required to be given to the senior most officer possessing the requisite qualifications and experience. It is also required to be borne in mind that the vacancy was unexpected and that it was not possible to deal with the necessary training and experience and one of the officers of the department itself or that to give such training would cause delay, and finally the occasion of transfer from one Department to another should be rare.

6. Reading the affidavit-in-reply of the respondent no.1, nothing is stated that the principles laid down in the circulars have been taken into consideration before appointing by transfer respondent no.4. On the contrary, the requirement of the Circular dtd. 4th May, 1950 has been overlooked by stating that the erstwhile of Bombay State circular is no longer relevant. In my opinion, the reply as well as the act of appointment by transfer made

in the instant case in a very casual manner. The guidelines of the Government are required to be followed rather than to be ignored. If the guidelines are ignored like in the present case while exercising power, such a power is nothing but an act of arbitrariness, errorgance and malafide. In the instant case, the petitioners have clearly alleged malafides by stating as under:

"The petitioners say and submit that they have reliably learnt that the respondent no.2 was very much interested in bringing to this post a man of his choice and liking and therefore, the respondent no.4 who was working under the respondent no.2, was being brought by the said respondent no.2 who was not working in the Transport Department. Therefore, the appointment of respondent no.4 is by a method of picking and choosing, ignoring the legitimate claim of the members of the petitioners who are eligible as per the recruitment rules for being promoted to the post of Regional Transport Officers including Deputy Director of Transport (Administration) Class-I. Thus, in view of this, it becomes amply clear that the promotion of respondent no.4 is arbitrary, capricious, illegal and malafide and the therefore, the same deserves to be quashed and set aside."

Now this fact has not been denied in the affidavit-in-reply. No separate reply is filed by respondent no.2 & 4 denying or explaining the allegation. In absence of this the allegation is required to be accepted, and accordingly I have no hesitation in accepting the same. Apart from that, nothing is stated in the affidavit-in-reply about the requirement of the service of the respondent no.4 as a Deputy Director of Transport (Administration) Class-I post, where he is promoted. There is not a whisper in the reply about the so-called administrative brilliance of respondent no. 4 which the petitioners are lacking warranting the appointment in Class-I Post. On the contrary, the respondent no.4 is belonging to a junior cadre in the pay scale of Rs.2200-4200, and therefore, no incumbent of a junior cadre can be brought from outside to supersede the department candidates. In view of this discussion, I am of the opinion, that there is no justification in transferring the respondent no.4 to the post of Deputy Director of Transport (Administration). By appointing respondent no.4 as Deputy Director of Transport, the respondents have blocked the promotion of the eligible candidates including petitioner no.2 without there being

any justiciable ground, and therefore such an appointment being illegal, arbitrary & malafide, deserves to be quashed and set aside. Since this petition is required to be allowed on this ground, the other questions are kept open.

7. In the result, the petition is allowed. The impugned order dated 2.2.1998 Annexure 'H' appointing respondent no.4 as Deputy Director of Transport (Administration) Class-I in the pay scale of Rs.3000-4500 is quashed and set aside. The respondents are directed to consider the case of the eligible Assistant Regional Transport Officers for promotion to the post of Regional Transport Officers including the post of Deputy Director of Transport (Administration) Class-I. If at all the respondents decide to fill in the said post by appointment on transfer, the respondents shall do so keeping in mind the observations made in this judgment. The rule is made absolute in the above terms with no order as to costs.

8. At the request of learned AGP Mr. P.B. Bhatt, the implementation of this order is stayed for a period of two weeks to enable the respondents to approach the higher forum.

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